

LEGAL SERVICES AND COMMUNITY ECONOMIC DEVELOPMENT

INTRODUCTION

Representation of community groups and non-profit organizations in community development activities can be an important component of our service to client communities. This paper introduces the concept of “CED” and offers some practical recommendations to legal services programs that may be considering implementation or expansion of a CED practice. It is based on my experiences in developing a CED practice at Camden Regional Legal Services, as well as on the insights I gained from collaboration with the National Economic Development and Law Center, which helped CRLS to develop its CED initiative. The paper first defines CED and explores how it fits into a legal services agenda. It then discusses how and why a CED practice must be client-focused. Finally, it concludes with an overview of the process of planning and implementing a CED practice and some suggestions for overcoming potential obstacles.

I. WHAT IS A COMMUNITY DEVELOPMENT, OR “CED”, PRACTICE

Community economic development, commonly referred to as CED, is a strategy for revitalizing low-income neighborhoods through the work of resident-controlled organizations. CED initiatives build strong and sustainable community institutions, increase the level of economic and other resources, and improve the quality of life in distressed neighborhoods. CED may include neighborhood planning, creation of affordable housing, development of community-controlled businesses and new living wage jobs, and expansion of health, educational, employment, and other services. CED initiatives are undertaken by non-profit organizations which are composed primarily of

neighborhood residents, reflect the diversity of the community, and are accountable to residents and responsive to local needs.

The CED attorney can provide legal education, assistance with organizational development, and legal representation that supports community development activities. Low-income communities do not have readily available access to legal expertise. Educating community leaders on legal issues relevant to their work is therefore a key component of CED practice. Tenant leaders and housing developers must be knowledgeable about federal and state housing laws. Community organizations involved in neighborhood planning and redevelopment need to know about municipal government law. An organization working on jobs issues may need information on employment and benefits law. Legal education enables the organization's leaders to help other community residents and assists them in selecting priorities and developing strategies for their organization.

A lawyer can assist new community groups with incorporation, drafting of bylaws, and obtaining tax-exempt status from the IRS. The attorney can also inform the board members of their responsibilities, explain the procedures for conducting corporate business, and provide the group with sample corporate documents. The lawyer can guide an inexperienced group through the process of organizational planning and advise them on basic management and finance issues. A CED practitioner can also assist the group in securing additional technical help and training from other agencies.

Once a non-profit group is established, the CED attorney can serve as the group's corporate counsel. Many organizations need representation in real estate matters, including property acquisition, leases, zoning, and property tax exemptions. The attorney

can also draft contracts, advise on personnel matters, and negotiate partnership agreements. In addition, the attorney can advise the group on how to preserve non-profit status and assist with forming subsidiary corporations and other corporate restructuring.

Community organizations may request representation not only with regard to their internal organizational issues, but in matters which further their organizational goals. A tenant association may need to take legal action against the landlord to obtain necessary repairs to the apartment complex. A civic group may want to legally challenge a zoning or planning board decision or the issuance of an environmental permit. A client group may request legal assistance in preparing testimony or written comments for a public hearing. A comprehensive CED practice includes involvement in community initiatives that further CED objectives.

II. CED AND LEGAL SERVICES

CED is a strategy for attacking some of the root causes of poverty, such as the lack of economic opportunities in low-income communities. CED addresses on a systemic level many of the problems our clients face daily, including the lack of decent, affordable housing, living wage jobs, and clean, safe, livable neighborhoods. CED offers legal services practitioners an alternative approach for “impact” work that benefits large numbers of clients. A CED practice therefore furthers the fundamental mission of legal services.

Legal services staff are uniquely equipped to become involved in CED. They bring a depth of understanding of poverty law issues, which they can share with client groups. Many legal services staff are also very familiar with the institutions, leaders, and inventory of resources in the communities in which they work.

Furthermore, representation of local non-profits and community groups creates strong connections between the legal services program and the larger community. Greater visibility may lead to more local support for legal services. A CED initiative may attract new funders that see CED as a more innovative and holistic approach than traditional legal services work. CED may also help the program retain experienced and committed staff. The development of a CED practice thus strengthens legal services as an institution.

III. CED AS A CLIENT-CENTERED LEGAL STRATEGY

CED is defined and driven by the clients, i.e. the community groups represented by the legal services program. A primary goal of CED is the empowerment of these client groups. CED practice is a type of client ‘self-help’, which builds the capacity of community groups and helps develop leadership among its members. CED practice thus enables the community members themselves to address the problems in their neighborhoods.

To accomplish these, the community must play a central role in defining CED work and selecting the strategies for advancing its objectives. If community members are not involved in setting the program’s initial CED priorities, the legal services staff will not be able to attract a significant number of clients or generate interest in their proposed activities. The CED attorney must also continue to be responsive to requests for assistance from community organizations. In addition, CED client groups must determine the particular strategies used for meeting their objectives, based upon their awareness of neighborhood needs and of their own organizational goals. If the clients become unduly influenced by the attorney, the process is no longer community-controlled.

Effective CED work thus requires redefining the traditional role of an attorney. In a litigation-oriented practice, the attorney determines the legal strategy and develops the case with little client input. The client merely decides whether to settle the case or go to trial, and once the case proceeds to trial, the client usually has a very limited role in the court proceedings. Even in cases that do not involve litigation, an attorney often takes charge in attempting to solve a particular problem for a client. This dominant attorney role may defeat the client-centered CED goals of strengthening community organizations and building resident leadership. For this reason, the CED attorney should never serve as the main advocate or spokesperson for a client group. The CED practitioner must also question how his or her chosen role at every stage in the process affects the client group. For example, an attorney must consider under what circumstances it is appropriate to conduct negotiations on behalf of a client group alone, when to involve the clients in the process, and when to help the clients do the negotiating themselves. Similarly, the attorney must weigh whether performing certain tasks for a client group would support the group's efforts or hinder the group's efforts to build capacity.

Effective, client-centered CED practice also requires balancing the sometimes competing goals of strengthening community organizations and helping these organizations achieve specific objectives. Attorneys are trained to be goal-oriented, and likely to urge a client group to select the most seemingly quick and efficient path to a desired result. If that "efficient" strategy does not allow for leadership development, coalition building, or community outreach and public participation, however, it may impede the development of the organization. For example, a community group may forego litigation because it would take the focus away from the work of the community

members or damage its relationships with local agencies, and therefore work against its ultimate goal of becoming a strong community institution. Hiring outside technical consultants could further a project, but may interfere with efforts to teach local community residents needed skills. Acceptance of certain grant monies may restrict a group's activities or burden it with grant compliance requirements which it is not ready to assume. A CED attorney must be sensitive to these tensions and help the group members explore the ramifications of each strategy.

IV. STARTING A CED PRACTICE IN A LEGAL SERVICES PROGRAM

In order to develop a viable CED practice, the director and Board of Trustees must first make a conscious choice to incorporate CED into the work of the program and allocate resources to its development and implementation. Otherwise, CED activities will remain sporadic, dependent on the interests of particular staff members, and limited in scope. The lack of continuity and commitment will interfere with the program's ability to develop a client base and to produce meaningful results.

CED does not usually require changing program priorities, as fits within commonly accepted priorities such as preserving housing, stabilizing income, and promoting health and safety of families. CED may allow the program to address some emerging priority areas, such as employment law issues and job-related needs including transportation and child care.

The program must develop intake screening procedures and eligibility criteria for CED. LSC regulations define eligibility for client groups, but programs with multiple funding sources may choose to expand eligibility criteria pursuant to those funding requirements. Group representation may require new intake documents, such as

questionnaires, request forms, and group retainers. The program may also want to set specific priorities for its CED work, focusing on particular geographic areas or specific issues such as housing or employment.

Group representation can require a reexamination of the program's conflicts policies. For example, the program may need to determine how it will represent non-profits that are in direct competition with each other, whether representation of affordable housing developers will bar later representation of renters or purchasers of the housing units, or whether representation of tenant associations is inconsistent with representation of individual tenants who have conflicts with the tenant leadership. While it is impossible to anticipate every situation, it is helpful to set some general parameters at the outset as to what cases will be accepted for representation despite the possibility of subsequent conflicts and which cases should be excluded because of the limitations they would place on future representation of otherwise eligible clients.

The program should consider conducting a formal needs assessment to determine specific objectives for CED. A survey, interviews, or focus groups provide an opportunity for staff to meet with community leaders and key agencies, learn about ongoing community economic development activities and the specific needs of the organizations for legal and technical help, and publicize the creation of a new area of practice.

The program must also decide whether to create a specialized CED unit or to incorporate CED into the jobs of some or all staff throughout the program. There are advantages and disadvantages to either approach. If the CED staff is specialized, the CED practice does not compete with the demands of an individual client caseload. The

separation can be crucial, because the emergent, compelling nature of the individual cases places great demands on an attorney's time and can make it virtually impossible to make the longer-term, less crisis-oriented work a priority. Separation of duties also facilitates the development of expertise by the attorney. Furthermore, creation of a unit demonstrates long-term commitment. On the other hand, the isolation of CED from the other work of the program can lead to lack of communication among staff. Both the CED staff and the other attorneys do not benefit from each other's knowledge of the client community and are less likely to develop holistic approaches to meeting client needs. Attorneys in the program may end up working at cross purposes with each other. The lack of collaboration can also personalize the CED practice to a particular individual, impeding development of CED within the program, and ultimately hurting organizational continuity.

Legal services offices throughout the country have utilized both models, but programs which have devoted significant resources to CED work have usually chosen to assign specialized staff to the project. Some programs have opted for hybrids of these two basic approaches, such as a task force comprised of staff of different units who collaborate on CED projects. Each legal services program must make the decision on how to structure the CED practice based on its particular circumstances, the level of resources committed, and its long-term goals.

V. OVERCOMING COMMON OBSTACLES

CED requires development of new areas of expertise. CED legal work includes real estate, local government law, land use law, contracts, partnerships, tax law, non-profit law, environmental, and employment law. Knowledge of real estate financing,

organizational management, fundraising, and grants management is also helpful. The new CED attorney may discover that even years of legal services work have not provided him or her with experience relevant to a CED practice. The program must allocate a training budget to CED and afford start-up time to the new CED attorney to develop knowledge of new areas of law in order for the CED initiative to be successful.

Because CED covers so many issues, the attorney may find it is easiest to begin with the most familiar areas of law. A housing attorney might reach out to tenant organizations and/or housing developers, a farmworker attorney could assist organizations working on employment or health issues, and a family law attorney may collaborate with domestic violence shelter providers.

In addition, there are many resources that can help the attorney acquire the needed expertise. The National Economic Development and Law Center in Oakland issues training materials and publications specifically designed for CED practice and its extremely experienced staff can provide back-up assistance on a consulting basis. NEDLC can also refer the new attorney to CED lawyers in other legal services programs who are often willing to give advice or share sample documents. Legal services Board members and local attorneys in private practice are another excellent resource. A panel of pro bono attorneys could give advice, co-counsel difficult cases, or conduct trainings. Area public interest law firms and agencies that work with non-profit organizations may also be willing to share resources.

Some legal services management are nervous about expanding into an area of practice that could potentially violate program restrictions. Other directors worry that a CED practice will be hard to justify to funding sources in terms of the numbers of cases

handled and clients served. In reality, CED practice is fully consistent with LSC regulations. Furthermore, CED can generate reasonable case numbers if a program treats every legal issue on which it offers advice or assistance as a separate case, rather than opening one file per client group. In addition, the new methodology being introduced by LSC to capture reporting of “matters” will help programs to document their community outreach and education efforts. Better systems of outcome measurement in CED practice are still needed, however, in order to fully recognize the services offered by CED practitioners.

Starting a CED practice can lead to inter-office conflicts. Some legal services attorneys view CED as not being real legal work, while others may question whether it belongs in a legal services program. Some staff resent the flexible hours and relatively low case numbers. Ongoing communication and collaboration among staff can help change these perceptions. Mutual referrals of clients by CED attorneys and other staff make the staff more aware of the contributions made by the CED unit. Involving non-CED staff in some aspect of the group representation breaks down the barriers even further. For example, the housing unit of an office could represent a tenant group with respect to the owner’s management policies, while the CED attorney assists the group draft bylaws and develop election procedures. Joint planning of community events or community legal education sessions offers additional opportunities for collaboration.

There are other aspects of CED that differ from traditional legal services practice. While legal services attorneys are accustomed to a constant stream of clients coming in the door, CED requires that the attorney get out of the office, learn what is going on in the neighborhoods, and create relationships with community leaders and representatives

in order to win their trust. This process may require patience and persistence, as community leaders may not be accustomed to requesting legal services to handle their corporate matters, or may see the program as bureaucratic and unresponsive to community needs. The lawyer must understand the reasons for such responses and continue to seek opportunities to fit in to ongoing community initiatives.

CED attorneys must be willing to meet with client groups during evening hours and even weekends. Some staff may be concerned about safety when attending neighborhood events. Every program needs to address at the beginning what the expectations of CED staff are in this regard and how to balance them with the individual needs of the staff members.

Finally, the CED lawyer must learn to accept the often slow pace of community development. Unlike individual cases, which often get resolved in days or even hours, CED projects can stretch over years. Organizations in low-income communities are often fragile, with very limited human and financial resources, and may not be able to stay in existence long enough to accomplish their goals. A CED attorney needs to learn how to cope with these frustrations without becoming discouraged, to recognize successes along the way, and to counsel community groups on how to become sustainable despite the stresses they face.